

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

HOWARD AYERS,

Plaintiff,
-v-

9:17-CV-1229
(DNH/TWD)

ZACHARIE TROMBLEY, Food Service
Administrator, Barehill Correctional Facility,
formerly known as D. Trombley and HENRY
BERNIER, Civilian Cook, Barehill Correctional
Facility, formerly known as Beriner,

Defendants.

APPEARANCES:

HOWARD AYERS
Plaintiff pro se
502 W. 213 Street 3C
New York, NY 10034

HON. LETITIA JAMES
Attorney General for the State of New York
Attorney for Defendant
The Capitol
Albany, NY 12224

DAVID N. HURD
United States District Judge

OF COUNSEL:

KONSTANDINOS D. LERIS, ESQ.
Ass't Attorney General

DECISION and ORDER

Pro se plaintiff Howard Ayers brought this civil rights action pursuant to 42 U.S.C. § 1983. On July 8, 2019, the Honorable Thérèse Wiley Dancks, United States Magistrate Judge, advised by Report-Recommendation that defendants' motion for summary judgment

be granted in part and denied in part. Specifically, Magistrate Judge Dancks recommended that the motion be granted as to defendant Trombley on plaintiff's First Amendment retaliation claim based on exhaustion grounds but that the motion be denied as to defendants Trombley and Bernier on plaintiff's First Amendment Free Exercise claims based on qualified immunity grounds. Defendants timely filed objections to the Report-Recommendation with respect to the qualified immunity issue.

Based upon a de novo review of the portions of the Report-Recommendation to which defendants objected, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. § 636(b)(1).

Therefore, it is

ORDERED that

1. Defendants' motion for summary judgment is GRANTED in part and DENIED in part;

2. The motion is GRANTED with respect to plaintiff's First Amendment retaliation claim against defendant Trombley based on exhaustion grounds and that claim is

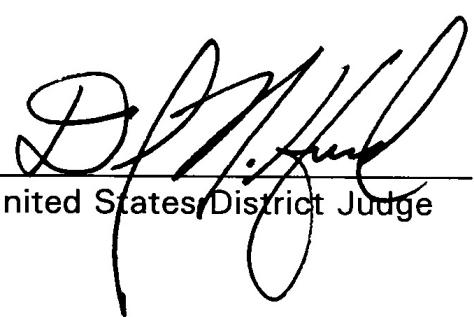
DISMISSED;

3. The motion is DENIED without prejudice with respect to plaintiff's First Amendment Free Exercise claims against defendants Trombley and Bernier based on qualified immunity grounds and those claims shall proceed to trial;

4. Any request for pro bono trial counsel shall be filed within thirty (30) days of the date of this Decision and Order; and

5. Trial is scheduled for February 10, 2020, in Utica, New York.

IT IS SO ORDERED.



United States District Judge

Dated: August 19, 2019
Utica, New York.